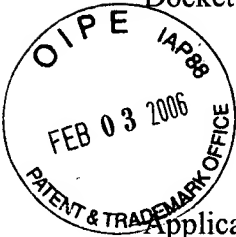


AF/3764
2/2/06

Docket No.: 416-001



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Applicant: David W. Perrego) Law Office 3764
Serial No.: 09/740,169) Trademark Attorney:
Filed: December 19, 2000) Quang Thanh
Title: VERTICAL TRACTION ASSEMBLY)
AND METHOD)

Mail Stop Appeal Brief-Patents

Commissioner of Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

I hereby certify that this correspondence is being deposited with the United States Postal Service as **First Class Mail** in an envelope addressed to: Director of the U.S. Patent & TM Office, P.O. Box 1450, Alexandria, Virginia 22313-1450 on February 1, 2006.

By: 

REPLY BRIEF

Applicant hereby submits a reply brief filed within three (3) months of an Examiner's Answer dated November 1, 2005 having obtained a one month extension of time under 37 C.F.R. 1.136 (b). If there is a fee for filing an appeal brief, please charge my Deposit Account No. 13-1720.

Real Party in Interest

Applicant, David W. Perrego, is the real party in interest.

Related Appeals and Interferences

No other appeal and/or interference exists that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

Status of Claims

Claims 1-15 (Appendix B of the Appeal Brief) are rejected and under appeal.

Claims 16-19 are withdrawn from consideration as being drawn to a non-elected invention.

Grounds of Rejection to be Reviewed On Appeal

The rejection of claim 1 under 35 U.S.C. 102(b) as anticipated by Chitwood (5,662,597) on page 4 of the Examiner's Answer states that:

- a) the "torso harness means 66 (fig. 1) [is] effective to maintain a person in a vertical traction suspension position;"
- b) the "adjustable inclined table 12 [of Chitwood]... can be inclined at an angle of 80 degrees (col. 2, lines 26-29), which would appear to be more vertical than Appellant's inclined table;" and
- c) the "traction force focusing means 20 attached to the frame means [applies] ... pressure directly to a selected location along the cervical region of the user's spine who is in the vertical traction suspension position (fig. 1)."

The rejection of claim 9 under 35 U.S.C. 102(b) as anticipated by Burton (4,205,665) on page 5 of the Examiner's Answer states that:

- a) "a foot stop 93 (col. 5, lines 35-43 comprising a first surface means (upper platform 94) that is capable of supporting a non-traction person while standing to don the harness means;"
- b) the "foot stop also includes a second surface means (lower platform 96) that is capable of supporting a person while standing to adjust said harness means;" and
- c) the "person [can] stand on the second partial traction lower platform 96 (fig. 2)" while "the harness 32 [is] effective to suspend a person for a partial traction pressure."

The rejection of claims 1, 7 and 10-14 under 35 U.S.C. 103(a) as being unpatentable over Nelson (4,890,604) on page 6 of the Examiner's Answer states that:

- a) although Nelson "does not include torso harness means coupled to flexibly depend

downwardly from the frame means,” but that a conventional body strap 43 shown in Fig. 2 will accomplish the same result to “maintain a person in gravity traction suspension position (fig. 2, col. 5, lines 40-42);”

- b) only one, unit 147, of the “wheeled trolley units 145-148” is the “focused traction force means [that is] effective to derive the pressure from a portion of the weight of the person in the vertical traction suspension position;” and
- c) trolley rollers 153 are “releasable tightening means” that accomplish the same results as the releasable tightening means adjustably connect pad element 25 in Applicant’s device.

The rejection of claims 2-6, 8, and 15 under 35 U.S.C. 103(a) as being unpatentable over Nelson in view of Burton on page 7 and 8 of the Examiner’s Answer states that:

- a) the foot stop 93 of Burton that is “a safety device to help protect the patient from a fall if one of the primary support elements fails” (Fig 2, col. 5, lines 35-43) is “a non-traction receiving surface means” that is missing from the Nelson structure but is obvious to one having ordinary skill in the art to attain the results set forth in Applicant’s claims;
- b) Nelson discloses “the predetermined amount of focused traction pressure” that is “directly [applied] to a selected location along the spine of the person who is in said vertical traction suspension position” (Applicant’s claim 1, para. c); and
- c) Burton “suggests that the amount of focused traction pressure is equal to about 40% of the weight of the person” pointing to Fig. 1 of Burton that shows a positive load “on each lumbar disc” that is adjusted by “the angle of tilt the force can be adjusted to a tolerable level for the patient” using the Burton structure and that somehow is equivalent to Applicant’s structure that focuses “traction pressure directly to a selected location along the spine of the person in a vertical traction suspension position.

Argument Responsive to Examiner's First New Argument

Applicant's claims are directed to a "vertical traction" assembly where the patient starts from a standing – vertical – position, dons the harness in a standing – vertical – position, remains in a standing – vertical – position during traction when the patient is in vertical suspension, and ends the traction in a standing – vertical position. The examiner argues that there "is no difference between Chitwood's harness and Appellant's harness. Chitwood's harness is disposed along an inclined surface just like Appellant's harness being disposed along an inclined surface as shown in fig. 8 of the present invention." Applicant's invention is not directed to the harness, but to the disposition of the patient with respect to the frame means and the traction force focusing means that applies "a focused traction pressure directly to a selected location along the spine of the person who is in said vertical [standing perpendicularly to the floor] suspension system." At no time is the patient in a horizontal or on an inclined platform or surface as in Chitwood "that can be inclined at an angle of 80 degrees" which is not a vertical – standing – position as claimed.

Applicant's harness is ***not*** "disposed along an inclined surface" as newly stated by the examiner in his new argument once the patient puts it on. Applicant's Fig. 8 discloses a patient in a "vertical traction suspension position" when held by the torso harness 35 and pad element 25 (the traction force focusing means attached to the frame means) applies a "focused traction pressure directly to a selected location along the spine of the person who is in said vertical traction suspension position" (Applicant claim 1, para. c). As shown, Applicant's harness fits the patient's upper torso while the patient is in a vertical – standing – position so that it is not "disposed along an inclined surface" and such a limitation is ***not*** in any of Applicant's claims. See Applicant's written description at the paragraph bridging pages 17 and 18 and following that proves that Applicant does not disclose or claim an "inclined table" on which the patient rests for long periods of time to receive

focused traction as suggested by the examiner. In fact, if Chitwood's patient were in the claimed a vertical – standing – suspension position, he or she would **not** contact Chitwood's "head receiving member" as he claims. So the Chitwood structure teaches away from Applicant's assembly.

The patient using Applicant's claimed vertical traction assembly does **not** rest on an inclined platform or table (Chitwood, Figs. 1 and 2); or on a bed mounted on hoops so as to tilt as desired (Burton, Fig. 2); or on a platform or plurality of wheeled trolleys mounted for back-and-forth movement (Nelson, Figs. 1-5 and 7-8, respectively). None of the prior art references show a patient in a "vertical traction suspension position" as in Fig. 8 of Applicant's disclosure. These prior art structures require a patient to use them for long periods of time to achieve the desired traction. Applicant's assembly is used for much shorter times to achieve his desired results. See the section "The Treatment Protocol" at pages 14-16 of Applicant's written description.

Argument Responsive to Examiner's Second New Argument

The examiner states page 12 that Burton's "frame means may include a rotating portion but is also a standing structure. Moreover, Burton also teaches that the frame means can be positioned such that the patient will be suspended at 90 degrees angle." Applicant's standing frame means does not rotate as does Burton's structure that must rotate as an inherent structural characteristic. Burton explains his treatment protocol that is completely different from Applicant's treatment protocol.

The preferred course of treatment according to the present method involves initially applying a small load at a small angle of tilt continually to the patient for a significant period of time. The angle is progressively increased as tolerable. According to one method the patient may determine when to increase the load and by how much. The temporal element is considered more important than the size of the load. Some patients may never achieve the fully dependent or 90° position. By way of example, it is anticipated that previously unoperated patients with a protruded disc will be maintained by this method for 10 to 14 days following which it will be discontinued. Patients with failed surgery may be treated for 3 to 4 weeks in the hospital and maintain a minimum schedule for one hour twice a day thereafter.
(Burton Patent - col.3, line 67 to col. 4, line 13).

Applicant's vertical traction assembly puts all its patients immediately in a vertical – standing – traction suspension position for very short times – from 20 to 30 seconds. Compare this to Burton's protocol that includes "initially applying a small load at a small angle of tilt continually to the patient for a significant period of time." Burton anticipates "that previously unoperated patients with a protruded disc will be maintained by this method for 10 to 14 days following which it will be discontinued." This is significantly different from each of Applicant's 20 to 30 second treatments.

Moreover, Burton states that some "patients may never achieve the fully dependent or 90° position." In contrast, Applicant starts at the fully dependent or 90° position which is maintained throughout each applied treatment. Burton further states that patients "with failed surgery may be treated for 3 to 4 weeks in the hospital and maintain a minimum schedule for one hour twice a day thereafter." That is a treatment length of 42 to 56 hours in traction in the hospital. That differs significantly from Applicant's device which can be used in the patient's home by the patient alone who dons the harness while standing, steps off the "first non-traction receiving surface means" onto a "second partial traction receiving surface means," and then "voluntarily steps to a vertical, gravity traction suspension position." Burton does not disclose such first and second surface means and their function as in Applicant's claim 9.

Burton explains the necessity of having "an inclined member" in his apparatus on which the patient is to recline.

A patient is supported by the upper body below the neck and above the lumbar spine on an inclined member. The angle of tilt of the inclined member is preferably adjustable. Lumbar reduction is thereby achieved without the sudden application of unnatural stress. The time during which the patient is supported in such a fashion is important for successful results. It is considered preferable for the patient to remain supported continuously for as long as he is able to tolerate the stress. The longer a patient remains supported, the more effective the therapy. An angle of, for example, approximately 30 degrees to the horizontal is sufficient to produce significantly useful negative loading on the lumbar spine.

The method particularly includes gradually increasing the angle of tilt to the totally dependent, or 90°, position, if possible, thereby progressively increasing the tractive force in a more tolerable fashion. The angle is increased according to patient tolerance of discomfort due to the apparatus used and pain due to his condition. According to this method, the patient would be supported at a reduced angle of up to 30° or more for a significant time of several hours or longer. The angle would be increased by an increment of, for example, 10° upon patient toleration of the smaller angle. It might take days or weeks for a patient to progress in this incremental way to a fully dependent position. Some patients may never reach the fully dependent position due to an inability to accept the stress. The angle the patient eventually reaches is less important than the total time in therapy. (Emphasis added.)

(Burton Patent - col. 2, lines 29 to 61).

In contrast, Applicant provides first and second standing support structures for the patient to don a harness while standing, adjusting the harness partially under gravity traction while standing, and then voluntarily stepping into an *immediate* vertical, gravity traction suspension position. As Burton notes, some “patients may never reach the fully dependent position due to an inability to accept the stress” particularly where Burton says the “angle the patient eventually reaches is less important than the total time in therapy.” Use of Applicant’s vertical traction assembly is contrary to Burton’s theory of treatment and is effective to treat an inflamed, disordered spine of a patient.

Moreover, the examiner argues that “Burton clearly shows a stand means 93 having a first surface 94 (upper platform) capable of receiving the patient standing and a second surface 96 (lower platform) also capable of receiving the patient standing (fig. 2).” Significantly, Burton refers to element 93 as a “foot stop” with a crank operated scissors mechanism 102 that “may be operated to adjust the position of upper platform 94 to just below the patient’s feet as a safety device to help protect the patient from a fall if one of the primary support elements fails.” The lower platform 96 simply clamps to the bed for supporting the upper platform 94 and scissors mechanism 102. The lower platform 96 is *incapable* of performing the intended claimed use, so it cannot meet Applicant’s claim limitations based on case law cited by the examiner. No teaching exists that

shows the specific uses for platforms 94 and 96 as the examiner argues.

Argument Responsive to Examiner's Third New Argument

The examiner says that Nelson discloses a device that pulls the body downwardly “along the inclined surface of the platform [to] thereby maintain a person in a vertical traction suspension.” He then points to Nelson’s Fig. 1 and col. 4, lines 19-27 which state:

The purpose of the index holes 66 on the index plate 65 is to set a starting position or inclination of oscillation. In FIG. 1, the starting position of oscillation is a horizontal position. However, the lock pin 68 [misquoted 69] can be removed and the table rotated to a position where the index opening of the drive link 49 faces another index hole 66, which will position the table at inclination when the motor 57 and drive link 49 are at the starting position shown in FIG. 1.

Viewing Nelson Fig. 1, the length of platform 39 is such that if the lock pin 68 were placed in the last index hole 66 to the right of the center as shown in the drawing, the end of the platform would hit the floor 12 and never reach a “vertical traction suspension system” as the examiner argues. The prior art structure is *incapable* of performing Applicant’s claimed intended use, so it cannot meet Applicant’s claim limitations.

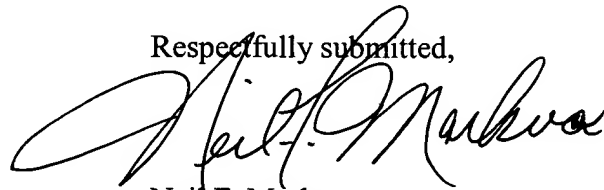
Regarding the examiner’s new argument that the term “adjustably connected” is not the same as “fixedly adjustable” is simply not understood. The term “connected” means “to join or fasten together.” Thus, as is clear from Applicant’s drawings, in particular Figs. 1 and 9, the pad element 25 is adjustably joined or fastened together with backboard 24 so as to stay at a selected location along the spine of the patient. Applicant’s written description page 6, lines 13-18, states that the “focused traction force means is adjustably connected to the frame means to be selectively secured to a plurality of vertical locations for directing a gravity traction force to a preselected area at a point along the spine of a person to be suspended from the frame means.” And at page 6, lines 21-26 Applicant states that “the focused traction force means includes pad element means [adjustably]

mounted to the backboard means and releasable fastening means is provided for selectively positioning the pad element means with respect to a person using the [assembly] to undergo vertical traction treatment in a full suspension position.” The terms “adjustably connected” and “fixedly adjustable” mean the same thing.

Conclusion

In view of the foregoing, Applicant has effectively responded to the examiner’s new issues presented in his answer and respectfully requests the Board to reverse the examiner’s final rejection of his claims.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Neil F. Markva", written in a cursive style.

Neil F. Markva
Attorney for Applicant